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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/788,545

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Michael Orr

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EXAMINER

REFAI, RAMSEY

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

09/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/788,545

Applicant(s)

ORR ET AL.

Examiner

Ramsey Refai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

82.
9/17/07
- 4) ☒ Claim(s) ^{1,2,7-9}~~1-9~~ 12, 15, 17-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 22-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 15, 17-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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DETAILED ACTION

Response to Amendment

Responsive to Request for Continued Examination (RCE) filed September 10, 2007. Claims 3-6, 10, 13-14, 16, 20, and 33 have been canceled. Claims 1, 2, 7-9, 11, 12, 15, 17-18, and 21 have been amended. Claims 1, 2, 7-9, 11, 12, 15, 17-19, and 21 remain pending.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 10, 2007 has been entered;

Response to Arguments

1. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, 7-9, and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a system comprising a predictive server and a client agent, which as described on page 4 of the Applicant's specification, are software applications. Therefore the system is merely software. Software programs/applications are not one of the statutory classes of invention. Software programs/applications must be tangibly embodied on a computer readable medium and be drawn to a practical application in order to be eligible for patent protection.

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Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 2, 7-9, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 includes the limitations “ *forwarding the stored first response and the received predictive responses to the client agent*” and “ *stored first response*”, which do not appear to be supported by the Applicant’s specification.

Claims 2, 7-9 and 21 depend on claim 1 above and are therefore rejected under the same rationale.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 2, 7-9, 11, 12, 15, 17-19, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1:

the limitation “ *said stored response*” lacks proper antecedent basis.

the limitations “ *with the predictive server analyzer unit*”, “ *with the agent analyzer unit*” are indefinite because it is not clear what these terms mean and has therefore rendered the claim vague and indefinite.

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Furthermore, the term “ and” in the last line of claim 1 has rendered the claim indefinite because it is not clear if there are more limitations.

In claim 11:

the limitations “ the server’ s first response” , “ the first response” lack proper antecedent basis.

the limitation “ the request” in line 16 is indefinite because it is not clear which request this is referring to.

the limitation “ with the predictive server” is indefinite because it is not clear what this term means and has therefore rendered the claim vague and indefinite.

Claims 2, 7-9, 12, 15, 17-19, and 21 depend on claim 1 and 11 above and are therefore rejected under the same rationale.

Claim Rejections – 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 7-8, 11, 12, 15, 17-18, and 21 rejected under 35 U.S.C. 102(e) as being anticipated by Klein et al (US Patent No. 7,047,485).

9. As per claim 1, Klein et al teach a system for enhancing perceived throughput between a client and a server, said system comprising:

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a predictive server in association with said server wherein said predictive server comprises a server analyzer unit and a server storage unit (column 6, lines 10-20, fig 1: web Agent 116 running on web server 112);

a client agent in association with the client, wherein the client agent comprises an agent analyzer unit and an agent storage unit (column 6, lines 64-67, fig 1; Applet 124 running on client 104);

wherein the predictive server is capable of:

receiving from said server, with the predictive server analyzer unit, a first response to request for a web page (column 5, lines 28-38);

generating at the predictive server storage unit a predictive list of requests for objects, which are needed for presenting the requested web page, based on an analysis of information contained within said stored first response (column 6, lines 10-29);

issuing predictive requests to the server, receiving from the server predictive responses (column 6, lines 24-36; requests for web objects in object list are made to web server 112 which can then obtain the requested object from application server 114, see column 5, lines 35-38), and

forwarding the stored first response and the received predictive responses to the client agent which, in turn, is capable of forwarding the stored first response and the received predictive responses to the client (column 6, lines 28-36); and

wherein the client agent is capable of:

receiving with the agent analyzer unit via the predictive server said first response (column 5, lines 28-38),

analyzing the first response (column 6, lines 34-67)

automatically forwarding said first response to the client (column 6, lines 28-36),

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receiving from the client a request for an object contained in first response and is needed for presenting the requested web page (column 7, lines 1-37),

comparing the request for said object with the already received predicted responses, wherein when an already received corresponding predicted response exists the existing predicted response is forwarded to the client (column 5, lines 39-45, column 3, lines 43-49), and

10. As per claim 2, Klein et al teach wherein the predictive server is further capable of generating an agent predictive list of objects which are needed for presenting the requested web page (column 6, line 65-column 7, line 37); and wherein the client agent is further capable of comparing the request against the agent's predictive list, when an already received predicted response does not exist, and if no entry for that request for an object, the request is forwards toward the server (column 6, lines 10-53; in pre-caching, the cache is first checked to see if the object requested is available prior to sending the request to the server).

11. As per claim 7, Klein et al teach wherein said client agent receives requests from said client and forwards the requests to said predictive unit using encapsulation (column 4, lines 15-28; request sent in web pages).

12. As per claim 8, Klein et al teach wherein data transmitted between said client agent and said predictive server undergoes a data processing step selected from a group consisting of data compression, partial information transfers, protocol conversion, and data packet combining (column 3, lines 59-63).

13. As per claim 21, Klein et al teach wherein said client agent is further capable of issuing a re-load command (column 4, lines 15-27; web browser feature).

14. As per claims 11, 12, 15, 17-18, these claims contain similar limitations as claims 1, 2, 7, 8, and 21 above and are therefore rejected under the same rationale.

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Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 9 and 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al in view of " Official Notice" .

17. As per claim 9, Klein et al fail to teach *wherein the client agent is adapted to transmit a faked response to a client before a real-response from said server has been received* . However, " Official Notice" is taken that the concept and advantage of sending a " fake" response before a real response is well known in the art since web pages contain objects, such as images or text, which may take longer to download then other objects. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant' s invention to include such a feature in Klein et al because doing so would allow for a partial response or " fake" response to be sent to the requesting user while the server continues to download all objects of the requested page.

18. As per claim 19, it contains similar limitations as claim 9 above and is therefore rejected under the same rationale.

Conclusion

The prior art made of record and not relied upon, which is considered pertinent to applicant's disclosure, are cited in the Notice of Reference Cited form (PTO-892).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
Examiner
Art Unit 3627
September 13, 2007
/RR/


F. RYAN ZEENDER
SUPERVISORY PATENT EXAMINER